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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/924,546	08/09/2001	Toshiaki Takase	Q65791	1990

7590 10/10/2006

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/924,546

Applicant(s)

TAKASE ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-9,12-15,17-22,24-33,35-38,40-42 and 44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5-9,12-15,17-22,24-33,35-38,40-42 and 44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Response to Amendment

2. Applicant's amendment filed August 17, 2006, has been entered. Claims 1, 17, and 28 have been amended as requested. Claims 2-4, 10, 11, 16, 23, 34, 39, 41, and 43 have been cancelled. Thus, the pending claims are 1, 5-9, 12-15, 17-22, 24-33, 35-38, 40, 42, and 44.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-9, 12-14, 17-22, 24-26, 28-33, 35-37, 40, 42, and 44 stand rejected under 35 USC 103(a) as obvious over JP 2000-160432 issued to Aikawa as set forth in section 5 of the last Office Action.

Applicant has amended independent claims 1, 17, and 28 to narrow the Young's modulus to 50 cN/dtex or more to 65 cN/dtex or more. However, as argued in the last Office Action, Aikawa teaches the nonwoven may contain fibers such as polyethylene, polypropylene, or polymethylpentene fibers (section [0026]). These are the same fibers that applicant teaches as high modulus fibers. Hence, it is reasonable to presume that the claimed Young's modulus would be present in the Aikawa invention. Support for said presumption is found in the use of like materials for making the nonwoven fabric. Products of identical composition cannot have mutually exclusive properties. *In re Spada*, 15 USPQ2d 1655. The burden is upon applicant to prove otherwise. In the alternative, it would have been readily obvious to one skilled in the art to manipulate the fiber composition and crystallinity to improve the Young's modulus. It has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215. Therefore, said amendment is insufficient to overcome the standing art rejection.

3. Claims 15, 27, and 38 stand rejected under 35 USC 103(a) as being obvious over the cited Aikawa reference in view of EP 834 938 issued to Tanaka as set forth in section 7 of the last Office Action.

Response to Arguments

4. Applicant's arguments filed with amendment have been fully considered but they are not persuasive.

5. Applicant traverses the above rejection by asserting "it is well known that a Young's modulus of commonly used fibers, including conventional polypropylene fibers and olefin

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composite fibers, is less than 50 cN/dtex” (Amendment, page 12, 2nd paragraph). In support of said argument, applicant cites Attachments A and B, included in the Response filed April 20, 2005. While Attachment A teaches a Young’s modulus for a composite olefin fiber of 43.1 cN/dtex, said modulus cannot be extrapolated to all polyolefin fibers or to polymethylpentene fibers, or the numerous other synthetic and natural fibers taught by Aikawa. Additionally, Attachment B teaches the Young’s modulus of the fiber is greater than or equal to 43.1 cN/dtex, which includes 50 and even 65 cN/dtex. Therefore, applicant’s argument is found unpersuasive and the above rejections stand.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
October 2, 2006